

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

[SECOND CORRECTED COPY]

77-1127

To be submitted

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1127

UNITED STATES OF AMERICA,

Appellee,

—v.—

LEOLUCA GUARINO,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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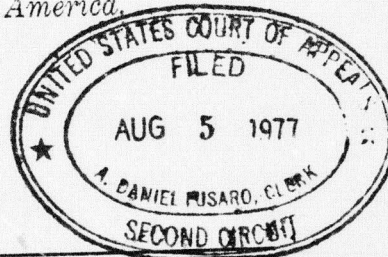


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LEOLUCA GUARINO,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Leoluca Guarino appeals from an order entered on December 28, 1976, in the United States District Court for the Southern District of New York, by the Hon. Vincent L. Broderick, United States District Judge, denying, as moot, Guarino's motion to dismiss with prejudice Indictment 76 Cr. 324 charging him with violations of the federal narcotics laws.

Indictment 76 Cr. 324, filed in forty counts on April 5, 1976 and unsealed on April 21, 1976, charged Guarino and thirty-two others with a conspiracy to violate the narcotics laws from January 1, 1968 to the filing of the indictment, in violation of Title 21, United States Code, Sections 173, 174 and 846. Guarino was also charged in Counts Thirteen and Fourteen with distributing three and one-half kilograms of heroin in violation of Title 21,

United States Code, Section 841(a)(1)(A). (App. 1; G. App. 15-26, 31).*

On June 24, 1976, pursuant to his own motion and over Government objection, Guarino was severed from the main trial of the defendants on Indictment 76 Cr. 324, which commenced on August 10, 1976 before the Hon. Richard Owen, United States District Judge, and a jury.** On December 2, 1976, Guarino moved, *pro se*, to dismiss the indictment, insofar as it related to him, with prejudice, claiming that he had been denied his right to a speedy trial and that dismissal was required under the Interstate Agreement on Detainers, Title 18, United States Code, Appendix, and the Equal Protection Clause. On December 14, 1976 the Government advised the District Judge that it would file a *nolle prosequi* with respect to Guarino and two co-defendants, and an order to that effect was entered by the Hon. Vincent L. Broderick, United States District Judge,*** on December 28, 1976. On the same day, Judge Broderick denied Guarino's motion to dismiss the indictment with prejudice, on the ground that the motion was moot. The Court further noted that it had

* References prefixed "App." are to the defendant-appellant's appendix. References prefixed "G. App." are to the Government's appendix. References prefixed "Tr." are to the transcript of the trial of the unsevered defendants.

** Twenty-two defendants went to trial on a redacted thirty-count indictment. On November 12, 1976 the jury returned verdicts of guilty as to seventeen defendants, not guilty as to four defendants, and failed to reach a verdict as to one defendant. The convictions of fourteen defendants are presently on appeal in Docket Nos. 77-1085-1094, argued before a panel of this Court on June 8, 1977.

*** Trial of the remaining defendants on the indictment was reassigned from Judge Owen to Judge Broderick after the conclusion of the first trial.

. . . "carefully considered the substantive representations contained in the Government's nolle prosequi and had] satisfied itself that the nolle prosequi [was] not being used to circumvent the time requirement of the Speedy Trial Act, 18 U.S.C. Section 3161, *et seq.*"

(App. 20).

From this order, Guarino now appeals.

Statement of Facts

Indictment 76 Cr. 324 charged the existence of a far-flung narcotics conspiracy of at least seven years' duration whose members were responsible for the distribution of enormous amounts of heroin and cocaine principally in New York, Washington, Miami, and Chicago. Leoluca Guarino and co-defendants John Capra and Steven DellaCava were named in the indictment as suppliers of heroin to the conspiracy.

At the time the indictment was filed, Guarino was incarcerated in the Atlanta penitentiary, serving a sentence of fourteen years' imprisonment on a 1973 federal narcotics conviction.* On April 22, 1976, one day after

* On May 16, 1973, in the Southern District of New York, Guarino and several other defendants including John Capra and Steven DellaCava were charged in Indictment S.73 Cr. 460 with a narcotics conspiracy and four substantive narcotics offenses. After a jury trial before the Hon. Marvin E. Frankel, United States District Judge, the defendants were convicted on all counts. Guarino and Capra each received concurrent sentences of fifteen years on the conspiracy count and on each of three substantive counts, along with a three year consecutive sentence on the fourth substantive count and a six year special parole term. DellaCava received concurrent sentences of fifteen

[Footnote continued on following page]

the instant indictment was unsealed, the Hon. Charles L. Brieant, Jr., United States District Judge, issued a writ of habeas corpus *ad prosequendum* directing that Guarino be brought from the Federal Penitentiary in Atlanta, Georgia, to the United States District Court for the Southern District of New York to plead to the charges contained in Indictment 76 Cr. 324. (App. 1, 6.) Guarino appeared on that date and a plea of not guilty was entered. He remained thereafter in the Metropolitan Correction Center, New York, New York (hereinafter "M.C.C."). (App. 1). Thereafter, on May 7, 1976, with all defendants present, a trial date of July 19th for all defendants was fixed in open court by the Hon. Richard Owen, United States District Judge. (G. App. 41-44.)

On May 13, 1976, Guarino moved jointly with Capra and DellaCava for "a continuation and adjournment of the trial date from July 19, 1976 to the Fall of 1976," for a severance of their trial from that of their thirty co-defendants, and for an extension of time in which to make further motions. This joint motion of May 13, 1976, filed *pro se*, referred to several claims based on the movants' 1973 convictions. It stated their belief that the conspiracy for which they had been convicted in 1973 was the same as the conspiracy with which they were charged in the 1976 indictment, and also their belief that the Government would again attempt to introduce evidence derived from the electronic surveillance that had been ruled illegal in 1973. (G. App. 45-50).

years on all counts, plus a special parole term of six years. On appeal, the substantive convictions of all three were affirmed; however, their conspiracy convictions were reversed as resting on evidence obtained from an unlawful electronic surveillance. *United States v. Capra*, 501 F.2d 167 (2d Cir. 1974). Subsequently, Guarino's sentence was reduced to fourteen years' imprisonment. (G. App. 7-9, 13). At all times relevant to this appeal Guarino has been in federal custody serving the above sentences.

On June 4, 1976, at the argument of the defendants' various motions, Guarino again urged upon the trial judge that he be granted a severance. Three days later, on June 7, Guarino filed a number of further motions, including a renewed motion for severance, a formal motion to dismiss on the grounds of double jeopardy and a formal motion to exclude illegal wiretap evidence. (G. App. 51-64).^{*} Thereafter, on June 24, 1977, Judge Owen granted the severance motions of Guarino, Capra, and DellaCava. Guarino remained in the M.C.C. until September 7, 1976 when he was returned to the Atlanta Penitentiary. (App. 3, 6-7).

On December 2, 1976, three weeks after the conclusion of the fourteen week trial before Judge Owen, Guarino moved to dismiss Indictment 76 Cr. 324 with prejudice, insofar as it related to him, on the grounds (1) that he had been denied his right to a speedy trial and (2) that he had been improperly returned to the Atlanta Penitentiary without first being tried in the Southern District. (App. 9-17). At a pre-trial conference held on December 8, 1976 before Judge Broderick, however, the Government advised the Court that it did not intend to proceed to trial against Guarino, or his co-defendants Capra and DellaCava. Although the Government suggested that its decision not to go forward rendered Guarino's outstanding claims moot, the Court requested the Government to file a brief memorandum of law dealing with the merits of Guarino's motions. The Government filed its memorandum of law along with an affidavit and proposed order of *nolle prosequi* shortly thereafter. Finally, on December 28, 1976, the district judge denied Guarino's various motions and entered an order of *nolle prosequi* on Indict-

^{*} In addition to those mentioned in text, Guarino made a large number of other motions during the period between his indictment and December 28, 1977. These motions are catalogued in Guarino's Motion to Correct Docket Entries dated December 10, 1976 (G. App. 65-69).

ment 76 Cr. 324 with respect to Guarino, Capra, and DellaCava. (App. 5).

ARGUMENT

POINT I

The District Court Properly Denied Guarino's Motion As Moot.

In seeking to have Indictment 76 Cr. 324 dismissed with prejudice, Guarino in effect sought two things: the setting aside of that particular indictment, and a judicial ruling that the Government was barred from ever securing a *new* indictment for the same crimes. As to the first of these two elements of relief, Guarino's motion was clearly moot. Through the *nolle prosequi*, the Government had irrevocably abandoned indictment 76 Cr. 324. Insofar as Guarino sought protection from that indictment, he already had complete relief.*

The only conceivably "live" aspect of his motion was his request for protection from a new indictment. However, this request, if it was not technically moot, was at least unripe for decision.

First, there was no reason to expect that the question of the validity of a new indictment would ever actually arise.** As is made clear in the *nolle prosequi* (App.

* Guarino's suggestion that his motion should have been decided because it was "capable of repetition yet evading review" is frivolous. If he is reindicted he can in the normal course challenge the indictment, and it will in no way "evade review."

** In effect Guarino seeks the equivalent of a declaratory judgment that any future indictment of him for the same crimes would be barred. See *White v. United States*, 377 F.2d 948, 949 (D.C. Cir. 1967) ("dismissal with prejudice constituted an adjudication which barred another prosecution for the same offense"). Numerous cases in which the courts have refused

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25-27), prosecution is at present considered unwarranted because of the necessity of a separate trial without the wiretap evidence, because of Guarino's claim that the conspiracies charged in 1973 and in 1976 are the same,* and because Guarino is already serving a significant sentence for very similar crimes. These facts are not likely to change; neither, barring the speculative possibility of new developments in this case, is the Government's decision not to prosecute.

A second strong reason to regard the question of whether the Government may reindict as unripe for decision is that if the question ever does arise, it will be upon facts quite different from those now presented.** There will, for example, have been a further period of delay, possibly giving rise to new speedy trial claims, or

declaratory relief because the actual controversy between the parties was excessively remote or hypothetical are collected in 10 C. Wright & A. Miller, *Federal Practice & Procedure* 760 (1973). See also 3 K. Davis, *Administrative Law Treatise* 116 (1958) ("The basic principle of ripeness is easy to state: Judicial machinery should be conserved for problems which are real and present or imminent, not wasted on problems which are abstract or hypothetical or remote.").

* If this is true, then indictment 76 Cr. 324 represents a re prosecution following Guarino's successful appeal of his 1973 conspiracy conviction. In such a case *North Carolina v. Pearce*, 395 U.S. 711 (1969), limits the power of the sentencing judge to impose an increased sentence upon reconviction. As set forth in the *nolle prosequi* (App. 26), Guarino's sentence for the 1973 conspiracy conviction was concurrent with other sentences, so that any additional time he now received for the conspiracy might constitute such an increased sentence upon reconviction.

** The "fitness of the issues for judicial decision" is one of the principal factors to be considered when judging whether a question is ripe, *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967), and clearly the issues are not fit for decision if the ultimate facts are not known. See also 3 K. Davis, *Administrative Law Treatise* § 21.02 (1958).

to a claim of a due process violation under *United States v. Marion*, 404 U.S. 307 (1972). The Government will also be able to present reasons, should they be necessary, to explain why the charges were first dismissed and then revived.

Because it may never actually arise, and, if it does, will arise in substantially different form, the question of whether the Government may reindict Guarino is classically unripe for judicial decision. The District Judge's refusal to address the question, although couched in terms of its "mootness," was entirely proper.*

POINT II

Even If Guarino's Motion Was Not Moot, It Was Properly Denied On The Merits.

On the merits, Guarino now asserts two grounds for dismissal of his indictment with prejudice. Even assuming that these issues are reached, they are meritless.

* It is true that the courts often grant dismissals with prejudice because of excessive delay, e.g., *Strunk v. United States*, 412 U.S. 434 (1973) (Sixth Amendment violation); *United States v. Furey*, 514 F.2d 1098 (2d Cir. 1975) (violation of district prompt disposition plan), and that the Speedy Trial Act contemplates such dismissal in some cases. 18 U.S.C. § 3162. However, the present case is distinguished in at least two ways from the normal class of cases in which dismissals with prejudice have been granted. First, the Government as well as the defendant sought dismissal here, making the possibility of reindictment particularly remote. Second, whereas a very strong claim of speedy trial violation might merit a final adjudication in the form of a dismissal with prejudice (and such a strong claim is often present where, for example, the Speedy Trial Act has actually been violated), Guarino's claim in this case is extremely weak, if not entirely frivolous. See Point II (A), *infra*.

A. Guarino Was Not Entitled To Dismissal With Prejudice On Speedy Trial Grounds

For his speedy trial claim Guarino relies on the Speedy Trial Act of 1974, and in particular its requirement that trial proceed within a certain number of days after arraignment on an indictment. 18 U.S.C. § 3161(c). Guarino's brief states that the applicable time period in his case was one hundred and twenty days from July 1, 1976, Brief for Appellant at 13, but he has misread the statute. The time within which to try did indeed run from July 1, 1976, the date of Section 3161(c)'s effectiveness, arraignment having taken place before that date. See 18 U.S.C. § 3163(b). However, since the twelve-calendar-month period following July 1, 1976 was the *first* such period, and not the *second*, as Guarino's brief states, the applicable time period was one hundred and *eighty* days, not one hundred and *twenty*. See 18 U.S.C. § 3161(g); Rule 5(a)(1), Plan for the Prompt Disposition of Criminal Cases, Southern District of New York. Even without any tolling of the statute under 18 U.S.C. § 3161(h), therefore, the time within which to try Guarino under the Speedy Trial Act would not have expired until December 28, 1976, the one hundred and eightieth day after July 1, 1976.

In fact the record makes clear that substantial amounts of time following July 1, 1976, were properly excludible under 18 U.S.C. § 3161(h) from the time within which Guarino was required to be tried under the Speedy Trial Act and Rule 10(a) of the local rules. To cite only the clearest example, on December 2, he filed the dismissal motion whose denial is the object of this appeal. That motion was under advisement between its filing and the dismissal of the indictment on December 28, 1976, and

this period was therefore clearly excludible under 18 U.S.C. § 3161(h)(1)(G).*

In any case, it is not necessary to find *any* tolled period prior to December 28, 1976. On that day the Government could still have tried Guarino, or, perhaps more realistically, obtained a continuance under 18 U.S.C. § 3161(h)(8)(A). It is sufficient for present purposes that as of the date his motion was denied, Guarino had no claim to dismissal under the Speedy Trial Act no matter how favorably it might be applied to him.**

* Numerous other motions by Guarino were also under advisement from the dates of their filings through the date of the indictment's dismissal. See Statement of Facts, *supra*.

Moreover, a number of essential witnesses were unavailable for trial of Guarino during and because of the trial of the unsevered defendants. For example, the Government's principal witness in the case, Jack Brown, whose essentialness to the trial of Guarino is best demonstrated by Guarino's own extraordinary efforts to suppress Brown's testimony, see Guarino's motions of October 6, 1976, (G. App. 71-87), was on the witness stand continuously from August 20, 1976, to September 8, 1976, in the principal trial of the unsevered defendants (Tr. 987-3103), and was for that reason clearly unavailable as against Guarino within the meaning of 18 U.S.C. § 3161(h)(3).

Finally, in response to Guarino's own severance motions, joined on May 13, 1976, with an explicit motion for continuance of the trial, Judge Owen ruled on June 24, 1976, that Guarino should be severed "for later trial." (App. 7-A). Clearly this constituted the granting of a continuance pending the main trial pursuant to §3161(h)(8)(A). Even if it did not meet the technical requirements of that section, it makes clear that the understanding of all concerned was that Guarino's trial was being continued at his own request until after the main trial, which consumed fourteen weeks and could not conceivably be conducted simultaneously.

** Guarino objects that the Government sought dismissal "in an effort to save their case for future prosecution." Brief at 13. First, the statute does not prohibit the Government from doing so. As is clearly implied by subsection §3161(h)(6), the Government is free to dismiss and reinstitute a charge, with time

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Moreover, even if the time within which to try Guarino had technically run on December 28, entitling him to a dismissal, he plainly was not entitled to a dismissal *with prejudice*. When granting a dismissal for failure to comply with § 3161(c), the District Court is required to determine whether the dismissal should be with prejudice on the basis of several factors: the seriousness of the offense, the facts and circumstances leading to the dismissal, and the impact of reprosecution on the administration of the Speedy Trial Act and the administration of justice. 18 U.S.C. § 3162(a)(2).^{*} The indisputable facts of record in this case are that Guarino's alleged offense was extremely serious, that the delay in his trial was the inevitable result of his own severance motion, and that the time period for trial had only expired on the exact day of the dismissal. Given these facts, it would have been a clear abuse of the District Judge's discretion to grant a dismissal with prejudice, even assuming, contrary to fact, that a technical violation of 3161(c) had occurred.

As noted above, the Speedy Trial Act of 1974 is the only speedy trial provision referred to in Guarino's brief on appeal. However, his dismissal motion in the District Court referred broadly to an alleged denial of a "prompt and speedy trial" (App. 9), and the accompanying memo-

running against it under the statute only when a charge is actually pending. *United States v. Sebastian*, 428 F. Supp. 967, 973 (W.D.N.Y. 1977). See also *United States v. Flores*, 501 F.2d 1356, 1359-60 (2d Cir. 1974). Second, even if some exception were to be made when the Government dismisses and re-indicts for the sole purpose of evading the statutory time limits, the District Court explicitly found that this is not such a case. No doubt having been cast on the reasons given for the *nolle prosequi*, the District Court's finding was not clearly erroneous.

^{*} Indeed, Rule 11(e) of the local rules appears to permit District Courts to dismiss with prejudice only under limited circumstances not applicable here, and under Rule 48b of the Federal Rules of Criminal Procedure for "unnecessary delay."

randum of law referred to the rule of this Circuit that the Government must be ready for trial within six months of indictment. (App. 16). Construing his papers liberally, and assuming that the various applicable speedy trial provisions other than the Speedy Trial Act of 1974 have been properly asserted in the District Court and here, it is clear that none of these provisions has been violated.

A claim of a speedy trial violation under the Sixth Amendment or the coterminous constraints of Rule 48(b) of the Federal Rules of Criminal Procedure would plainly be frivolous. See *United States v. Mejias*, 552 F.2d 435, 442-43 (2d Cir. 1977) (delay of twenty-one months "not extraordinary" and therefore no Sixth Amendment or Rule 48(b) violation), and cases cited.

Rule 7 of the Southern District Plan for Prompt Disposition of Criminal Cases, promulgated pursuant to 18 U.S.C. § 3164, requires the Government to be ready for trial within six months of the filing of an indictment, but this requirement was clearly met in this case. As noted above, at a pretrial conference held on May 7, 1976, the date of July 19, 1976, was initially set for trial of this case. In acceding to this date, which was well within the Rule 7 six month period, the Government made clear its readiness to proceed on July 19 with the trial of all unsevered defendants, which as of May 7 still included Guarino.

B. Guarino Was Not Entitled To Dismissal With Prejudice On The Basis Of The Interstate Agreement On Detainers

Guarino claims that his return from the M.C.C. in New York City to the Atlanta Penitentiary following his arraignment in the Southern District on indictment 76 Cr. 324, before any disposition of the case, entitles him to have the indictment dismissed. His theory is that if he were so returned to the custody

of a *state*, he would be entitled to dismissal with prejudice under the Interstate Agreement on Detainers (hereinafter "I.A.D.") as interpreted in *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976), and *United States v. Ford*, 550 F.2d 732 (2d Cir. 1977). Under Equal Protection principles as applied to the Federal Government in *Bolling v. Sharpe*, 347 U.S. 497 (1954), Guarino argues, he can be entitled to no less as a *federal* prisoner.

It is clear of course that the I.A.O. does not itself apply, Guarino never having been transferred from the custody of one "state" to another. The suggestion that the Federal Government, in entering the Agreement, became bound by a parallel set of restraints with respect to its own prisoners, is frivolous.*

Assuming that, as Guarino alleges, the Federal Government treats state and federal prisoners differently in some significant respect, all that is required to satisfy Equal Protection principles is that the difference of

* Followed logically, Guarino's reasoning would have at least two startling results. First, it would appear to imply that no state could effectively decline to join the IAD, since surely if the federal government treated the prisoners of a joining state differently than those of a non-joining state the equal protection question is virtually identical to that raised by Guarino. Similarly, Guarino's logic would seem to imply that all intra-state-transfers must be governed by the IAD: since the Equal Protection clause applies directly to the states, a requirement that intra-jurisdictional transfers must be given equal coverage as inter-jurisdictional ones would necessarily require all states to provide their prisoners with its benefits.

The easy answer to these problems as well as the present one, of course, is that the framers of the IAD decided not to give the IAD such coverage. Furthermore, as the Supreme Court has noted "more than once," "legislative reform by way of classification is not to be invalidated [under the Equal Protection clause] merely because the legislature moves one step at a time." *Schilb v. Kuebel*, 404 U.S. 357, 364 (1971).

treatment have a rational basis.* The rational basis for transferring federal prisoners between federal facilities more freely than state prisoners may be transferred between state and federal facilities, is simply that the reasons for minimizing state-federal transfers do not apply with the same force to intra-federal transfers.

The IAD's requirement that the charges on which a prisoner is transferred from one "state" to another be disposed of before his return insures that a "state" will have to give up custody of its prisoner, and interrupt his rehabilitation, only once for each set of such charges. To the extent that this provision is a comity provision, aimed at minimizing one jurisdiction's interference with another,** its policy obviously has no application at all to intra-federal transfers.

Another, and perhaps stronger, policy of the "one transfer only" provision is the protection of the prisoner. Article I of the IAD states that its purpose is to promote

* See, e.g., *Richardson v. Belcher*, 404 U.S. 78, 81-84 (1971); *Dandridge v. Williams*, 397 U.S. 471, 484-85 (1970); *McGowan v. Maryland*, 363 U.S. 420, 425-26 (1961); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488-89 (1955). A stricter standard of review would apply only if the difference of treatment involved a gender-based distinction (obviously inapplicable), a "suspect classification," or a "fundamental interest." See *Craig v. Boren*, 429 U.S. 190, 210 (1976); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). But no reason has been suggested why the distinction between federal and state prisoners should be regarded as "suspect," and the interest in having an indictment disposed of before retransfer is clearly not "fundamental." See *Meachum v. Fano*, 427 U.S. 215 (1976) (transfer from one prison to another does not infringe "liberty" interest so as to trigger Procedural Due Process).

** This Court has recognized that the protection of the interests of "sending states" was one of the purposes of the Agreement. See *United States v. Ford*, 550 F.2d 732, 740 (2d Cir. 1977). The Agreement itself contains evidence of this purpose; an example is Article V, Section (h), which apportions the costs of a temporary custody to the "receiving state."

"expeditious and orderly disposition" of the charges on the basis of which detainers are filed, and thus to reduce "uncertainties which obstruct programs of prisoner treatment and rehabilitation." As this Court has recognized, the requirement of final disposition during the first transfer "is intended to avoid disruptions in a prisoner's rehabilitation occasioned by repeated transfers between jurisdictions." *United States v. Ford*, 550 F.2d 732, 742 (2d Cir. 1977). A related problem, expressly referred to in the Agreement, is that of the prisoner's possible loss of good time when he leaves the custody of the "sending state." See Article V, Section (f).

Clearly the prisoner who is merely transferred between federal facilities is not harmed in these ways to the same extent, if at all. Transfer within the federal penal system can be expected to produce much less disruption in "programs of prisoner treatment and rehabilitation," and there is no problem at all with the loss of good time.*

The obvious and fundamental differences between state-federal and intra-federal transfers make a difference of treatment of the two entirely rational, and deprive Guarino's Equal Protection theory of any plausibility.

* Both in the passage from *United States v. Ford* quoted in the preceding paragraph, and in the following passage from *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976), this Court has referred to the "one transfer only" provision in terms of the problems that arise from *inter-jurisdictional* transfers:

"In view of the clear language of Article IV(e), we believe the Agreement was plainly designed to avoid the shuttling of prisoners back and forth between the *penal institutions of two jurisdictions*."

544 F.2d at 593 (emphasis added).

CONCLUSION

The order of the District Court should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

State of New York)
County of New York)

KENNETH WILLIAMS being duly sworn
deposes and says that he (~~she~~) is employed in the office of the
United States Attorney for the Southern District of New York.

Stating also that on the ^{5th} day of AUGUST, 1977
he (~~she~~) served ^{2 copies} a copy of the within BRIEF (APPELLATE)
by placing the same in a properly postpaid franked envelope
addressed:

*LEOLUCA GUARINO
P.O. BOX P.M.B. 78281
ATLANTA, GEORGIA 30315 -*

And deponent further says that he (~~she~~) sealed th said envelope
and placed the same in the mailbox for mailing at the United
States Attorney's Office, Southern District of New York, One
St. Andrew's Plaza, New York, N.Y. 10007, in the Borough of
Manhattan, City of New York.

Kenneth Williams

Sworn to me before this

5th day of *August, 1977*

Phyllis G. Rush

PHYLLIS A. RUSH
Notary Public, State of New York
No. 03-4635198
Qualified in Bronx County
Commission Expires 1978

